

Remarks

Reconsideration of the instant application is respectfully requested in light of the above-amendments and following remarks.

I. STATUS OF THE CLAIMS

Claims 1-5, and 7-14 are pending. Claim 6 has been canceled without prejudice to address an informality. No claims have been amended or added.

II. THE OBJECTIONS TO THE CLAIMS ARE RENDERED MOOT

The Examiner objected to claim 6 due to informalities, namely, the Examiner noted that such claim recited trademarks. In response, applicants respectfully submit that such claim has been canceled without prejudice. Thus, the objection is rendered moot.

III. DOUBLE PATENTING

The Examiner rejected claims 1-5 and 8-14 under the judicially created doctrine of obviousness-type double patenting in light of U.S. Patent No. 6,719,740, further indicating that such rejection may be overcome by filing an appropriate terminal disclaimer.

In response, although applicants do not necessarily agree with the Examiner's rejection, applicants respectfully submit that applicants intend to file an appropriate terminal disclaimer to address the rejection upon allowance of the remainder of the claimed subject matter.

IV. THE CLAIMED INVENTION IS PATENTABLE OVER VERDICCHIO

The Examiner rejected claims 1-3 and 7-11 under 35 U.S.C. 102(b) as being anticipated by Verdicchio et al (U.S. Pat. No. 6,156,323).

In reply, applicants respectfully submit that Verdicchio is not properly cited as 102(b) reference and nevertheless fails to teach or suggest each and every limitation of the claimed invention. For at least both such reasons, the Examiner's rejection is improper and should be withdrawn.

Applicants note that the claimed invention is entitled to the priority benefit of the provisional application filed on February 14, 2000 which date is prior to the December 5, 2000 issue date of Verdicchio. Such patent is thus not properly cited as a 102(b) reference, and the Examiner's rejection should be withdrawn.

Moreover, applicants respectfully submit that Verdicchio is not properly cited to anticipate the claimed invention, because such reference fails to teach or suggest each and every limitation of the claimed invention. In particular, applicants note that Verdicchio provides no specific teaching or suggestion to form a pouch having an apertured film layer wherein the protuberances of the aperture film *face said pouch*. Rather, the only teaching of orientation of a film layer in Verdicchio is in Example 4 wherein the apertured film is placed on the pouch backing "sleeve side up" to form the Verdicchio pouch. As will be recognized by those of skill in the art, such orientation places the aperture protuberances facing *away* from the pouch, as opposed to the currently claimed requirements. Thus, Verdicchio clearly fails to teach or suggest each and every limitation of the claims, and instead tends to teach and suggest away from the claimed invention. The Examiner's rejections should thus be withdrawn.

V. THE REJECTIONS UNDER 35 U.S.C. 103(a) ARE IMPROPER

The Examiner rejected claims 4-6 under 35 U.S.C. 103(a) as being obvious over Verdicchio in light of Zelazoski, and claims 11 and 12 under 35 U.S.C. 103(a) as being obvious over Verdicchio in light of Zelazoski and Roe.

In response, applicants respectfully submit that such rejections are improper because Verdicchio is not properly cited as a reference under 35 U.S.C. 103(a), as pursuant to 35 U.S.C. 103(c). In particular, 35 U.S.C. 103(c) makes clear that a patent that is citable as art only under 35 U.S.C. 102(e) may not be used in a rejection under 35 U.S.C. 103(a) against an application that is commonly-assigned to such patent. In the instant case, Verdicchio is a patent, commonly-assigned to the instant application, that appear to applicants to be citable, if at all, only under 35 U.S.C. 102(e). Accordingly, the Examiner's obviousness rejections, each of which relies on Verdicchio as a primary reference, are improper and should be withdrawn.

VI. CONCLUSION

Reconsideration of the instant application is respectfully requested. An early and favorable response is earnestly solicited.

Respectfully submitted,

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DATE: October 20, 2005